



# California Fair Political Practices Commission

May 18, 1989

Jeff C. Marderosian  
Karns & Karabian  
Attorneys at Law  
Suite 530 Hilton Center  
900 Wilshire Boulevard  
Los Angeles, CA 90017

Re: Your Request for Informal Assistance  
Our File No. I-89-212

Dear Mr. Marderosian:

This is in response to your request for informal assistance regarding the responsibilities of the Montebello Unified School District (the "district") under the provisions of Section 89001, the mass mailing prohibition of the Political Reform Act (the "Act").<sup>1</sup> At your request, we are treating your inquiry as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed.)<sup>2</sup>

## QUESTIONS

1. May photographs of the five elected members of the Montebello Unified School District Board of Education be included in school yearbooks?
2. May the names of the five elected members of the Montebello Unified School District Board of Education be included in school yearbooks?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

### CONCLUSIONS

1. Photographs of the five elected members of the Montebello Unified School District Board of Education may not be included in school yearbooks.

2. A roster of the names of the five elected members of the Montebello Unified School District Board of Education may be included in school yearbooks.

### FACTS

The Montebello Unified School District is a unified school district in Southern California consisting of approximately 27 schools and 32,000 students. Intermediate schools (Grades 5 through 8) and high schools (Grades 9 through 12) publish and sell school annual yearbooks. Students in yearbook classes at both intermediate and high schools prepare the layout or design of the yearbook as part of their class assignments. The students receive credit for this class as they would for other classes taught in the district. The yearbook teacher assists students in the design of the yearbook. The design historically has included the names and pictures of the five elected members of the Montebello Unified School District Board of Education. The pictures of the elected officials are displayed in the same size and their names appear in the same typeface and type size.

### ANALYSIS

Section 89001 prohibits mass mailings sent at public expense. A "mass mailing" consists of over two hundred substantially similar pieces of mail. (Section 82041.5.)<sup>3</sup> A mass mailing is "sent at public expense" if any of the cost of design, production, printing or distribution, is paid for with public moneys. (Regulation 18901(a), copy enclosed.) The yearbook qualifies as a mass mailing because the cost of layout or design and distribution is paid for with public moneys. The school district bears part of the cost of production through classroom instruction and use of school facilities for both production and distribution. The cost of production includes the salary of teachers who instruct the yearbook class.

Mass mailings generally are prohibited within the meaning of Section 89001 if they contain the name or photograph of an elected officer. (Regulation 18901(c).) Specifically, subdivision (c)(3) of Regulation 18901 states that elected officers "affiliated" with the agency may not be "featured" in a mass mailing distributed by

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<sup>3</sup> We assume for purposes of our analysis that the yearbooks are distributed to over 200 persons in any calendar month.

the agency. An elected officer is "affiliated" with an agency if he or she is a member, officer, or employee of the agency or a subunit such as a committee, or has supervisory control over the agency, or appoints one or more members of the agency. (Regulation 18901(c)(2)(C).)

Members of the Board of Education of the district are elected officials. They are "affiliated" with the district because they are officers of the district. Therefore, they may not be "featured" in the yearbook by inclusion of their photographs in the publication or by the manner of display of their names in the layout of the yearbook, such as by headlines, type size, or typeface. (Regulation 18901(c)(2)(B); Whelihan Advice Letter, No. I-89-063.) It follows that inclusion of photographs of the five elected board members in the yearbook violates the prohibition against mass mailing at public expense.

Conversely, a mass mailing is not prohibited if it meets all of the following criteria:

(1) The stationery, forms and envelopes used for the mailing are the standard stationery, forms and envelopes of the agency or committee of the agency; and

(2) The name of an elected officer who is affiliated with the agency or committee appears in the standard letterhead or logotype of the stationery, forms or envelopes of the agency, a committee of the agency, or the elected official and the newsletter or mass mailing is not otherwise prohibited under subdivision (c) because of additional references to the elected officer.

Regulation 18901(e).

As used in subdivision (e)(2) of Regulation 18901, the term "letterhead or logotype" includes a listing of agency members in which all the names listed appear in the same typeface and type size and location in the layout of the mass mailing. Accordingly, the names of the five elected board members may be included in the yearbook if all the names appear in the same typeface, type size and location in the publication.

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Should you have further questions regarding the above, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: Blanca M. Breeze  
Counsel, Legal Division

KED:BMB:plh

Enclosure

LAW OFFICES  
**KARNS & KARABIAN**

JOHN H. KARNS  
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April 4, 1989

Diane Griffiths  
Chief Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, California 95814

Re: "Mass Mailing"

Dear Ms. Griffiths:

As legal counsel for the Montebello Unified School District ["District"], informal advise is requested on the following issue pursuant to two California Administrative Code Section 18329(c),

The District is a unified school district in Southern California consisting of approximately 27 schools and 32,000 students. Intermediate schools (Grades 5 through 8) and high schools (Grades 9 through 12) are involved in the publication and sale of school annuals or yearbooks ["yearbook"]. Students in yearbook classes at both intermediate and high schools prepare the layout or design of the yearbook as part of their class assignment for which regular school credit is given like any other class taught in the District. The yearbook teacher assists students in the design of the yearbook. The design historically has included the names and pictures of all members of the Board of Education. There are five Board Members. The size of each picture is the same as well as the typeface and typesize of the name of each Board Member.

After the yearbook has been completely designed or layed out, an off-campus publisher is used to actually print the yearbook. The publisher is paid with funds of the student

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Diane Griffiths, Chief Counsel  
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body held in a student body account. These funds are collected by the student body as a result of a variety of fund raisers including bake sales and candy sales.

When the yearbooks are received from the publisher, the sale of the yearbooks take place. The purchase price is set at a price which will allow the student body to make a profit. The yearbooks are sold during non-class time such as nutrition, lunch and after school. A teacher usually assists in the collection of the sale proceeds. The teacher is not separately compensated for his/her duties in connection with yearbook sales.

With the foregoing as a background, please address the issue of the propriety of including Board Members' names and photographs in the yearbooks.

I look forward to your reply.

Very truly yours,

KARNS & KARABIAN



Jeff C. Marderosian

JCM:gd

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Very truly yours,

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# California Fair Political Practices Commission

April 12, 1989

Jeff C. Marderosian  
Karns & Karabian  
Hilton Center  
900 Wilshire Boulevard, Suite 540  
Los Angeles, CA 90017

Re: Letter No. 89-212

Dear Mr. Marderosian:

Your letter requesting advice under the Political Reform Act was received on April 10, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Diane M. Griffiths by plh*  
Diane M. Griffiths  
General Counsel

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